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Office of General Counsel

Lawrence R. Edmison, General Counsel

October 18, 1996

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FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M. Street NW
Dockets Reference Room
Room 230
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: Federal Communications Commission CC Docket No. 96-128 and CC Docket No. 91-35 Petition for Reconsideration by the Oklahoma Corporation Commission.

Dear Secretary:

Enclosed is the original and eleven (11) copies of the Petition for Reconsideration on behalf of the Oklahoma Corporation Commission, in the above-referenced proceeding. Please file the Petition in the docket and return two (2) file stamped copies in the postage prepaid envelope provided for your convenience.

Thank you for your assistance.

Sincerely,

Cece L. Wood

CeCe L. Wood
Assistant General Counsel

CLW/sc
Enclosures

No. of Copies rec'd 0+9
List ABCDE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
	)	
Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation	)	CC Docket. No. 91-35
	)	
Petition of the Public Telephone Council to Treat Bell Operating Company Payphones as Customer Premises Equipment	)	
	)	
Petition of Oncor Communications Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers	)	
	)	
Petition of the California Payphone Association to Amend and Clarify Section 68.2(a)of the Commission's Rules	)	
	)	
Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges	)	

PETITION FOR RECONSIDERATION BY THE OKLAHOMA CORPORATION COMMISSION

COMES NOW The Oklahoma Corporation Commission ("OCC") pursuant to Section 1.429 of the Federal Communications Commission ("FCC") Rules, and submits it Petition for Reconsideration of the

FCC's Report and Order[1] adopted and released on September 20, 1996 in the above-captioned proceeding. In support of its Petition For Reconsideration the OCC states:

1. The OCC has general regulatory authority over telephone/telecommunications providers operating within the State of Oklahoma[2] and therefore has an interest in this matter.

2. While the OCC wholeheartedly supports the FCC's efforts to "establish a plan" in response to the mandates of the Telecommunications Act of 1996 ("Act"), the OCC believes that the FCC's decision with regard to the pricing and ultimate deregulation of intrastate payphone service rates[3] goes beyond the scope contemplated by Congress and constitutes an unwarranted preemption of the OCC's authority over intrastate ratemaking.

3. Section 276(b)(1) of the Act authorizes the FCC to prescribe regulations addressing five specific areas of concern related to the provisioning of payphone service. In exercising its explicit but limited authority, the FCC must be mindful that such authority is not exercised in a vacuum, rather it is exercised in conjunction with other sections of the Act as well. If other sections of the Act exist which further restrict or limit Congress' grant of authority to the FCC, the FCC must acknowledge and abide by such limitations in the exercise of its authority. Section 2(b) of the Act is one such example.

4. The OCC contends that Section 2(b) of the Act limits the FCC's ability to establish a per call compensation plan for intrastate payphone calls in conjunction with the establishment or deregulation of intrastate rates. Specifically, Section 2(b) provides, in part, that:

> Nothing in the Act shall be construed to apply or give the Commission jurisdiction with respect to...charges, classification, practices, services, or regulations for or in connection with intrastate communication service by wire or radio or any carrier.

5. Based upon the OCC's interpretation of Section 2(b) of the Act, it would appear that the FCC's ability to exercise its grant of authority under § 276(b)(1) cannot be construed to authorize and allow it to set charges or rates for intrastate payphone service, nor mandate the deregulation of intrastate payphone rates and service.

6. In addition, the OCC appreciates the FCC's expressed concern "that local coin rates are not

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1 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, ("Order"), FCC 96-388, Adopted September 20, 1996, Released September 20, 1996.

2 Title IX, Section 18 of the Oklahoma Constitution and Title 17 Oklahoma Statutes Section 131 et. seq.

3 Report & Order , ¶ 56, 61

necessarily fairly compensatory"[4], however, the OCC believes that the FCC's finding "that a deregulatory, market-based approach to setting local coin rates is appropriate"[5] is premature for several reasons:

a) No evidence exists in the record to substantiate the FCC's conclusion that the local coin rates in each of the various states are not fairly compensatory (emphasis added);

b) The FCC's conclusion is premised upon the unsubstantiated belief that once PSP's are free to enter the market, they will; and

c) Finally, the FCC's conclusion is premised upon the unsubstantiated belief that once callers are free to choose payphones for their calls, they will exercise their freedom of choice.

7. It is the OCC's opinion that without further investigation and reconsideration of these issues, the FCC will not improve upon the competitive conditions, at least in Oklahoma, and will not serve the overall public interest if it is later determined that the economic viability of payphones hinges upon "location", rather than "the market" the FCC predicts will exist.

8. On September 30, 1996, Oklahoma, primarily in response to Section 253 of the Act mandating removal of barriers to entry, implemented emergency rules[6] which effectively lifted the gate to allow and facilitate competition in the payphone industry within the State of Oklahoma for the first time. Oklahoma's payphone rules were drafted taking into consideration the provisions contained in Section 276 of the Act, and are believed to be consistent with it. Despite its efforts, and in recognition of Section 276(b)(3) which makes it clear that Section 276 does not affect any existing contracts between location providers and payphone service providers, Oklahoma must accept that certain contractual barriers exist, and may remain for up to seven years, effectively precluding, or at least limiting, payphone competition in the State of Oklahoma.

9. The FCC does suggest that the various states are empowered to act upon their concerns about possible market failures. Specifically, the Report and Order states in paragraph 61, "when the states have concerns about possible market failures, such as that of payphone locations that charge monopoly rates, they are empowered to act by, for example, mandating that additional PSPs be allowed to provide payphones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers." Although either of the suggestions proffered might remedy the situation, the OCC does not possess any jurisdiction or authority to require private site owners to contract with multiple PSPs or to solicit contracts through a competitive bidding process in order to avoid monopoly situations. Therefore, the OCC requests that the FCC take a more conservative approach by

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4 Report & Order, ¶ 58

5 Id.

6 Oklahoma Administrative Code, 165:58 "Facilitation and Provisioning of Payphone Service"

allowing the states to identify for the FCC up-front, potential market failures that may exist, rather than requiring states to wait and see whether market failures "persist"[7], before the FCC will consider it for possible investigation.

10. Another reasonable approach the OCC supports as an alternative, during the FCC's plan implementation process, is the establishment of a rate ceiling during "phase two" in order to protect the public interest. The collective experience of states during the one-year period of "phase two" could then be evaluated without detriment to the end-user. The various states' data, gathered during this period, would likely answer many questions that currently exist about the payphone market, following the deregulation of ILEC payphone equipment and implementation of the other requirements of the Report and Order. At the conclusion of phase two, the individual states would be primed and in the best position to evaluate and decide whether their respective rates should then be fully deregulated.

11. Finally, the OCC joins the Texas PUC in its request for clarification on the scope of the § 276(c) preemption standards described in paragraph 59 of the Report and Order. The FCC notes that, "Many states impose regulations on PSPs, including ***certain requirements*** that must be fulfilled before a PSP can enter or exit the payphone marketplace." [emphasis added] The Report and Order then rules that these requirements are entry barriers that must be preempted. The OCC respectfully requests the FCC to provide additional guidance on what specific type(s) of regulations on PSPs might constitute "certain requirements" that may be preempted under §276(c) of the Act. Oklahoma currently requires certification (based upon the PSP's managerial, technical, and financial abilities to provide reliable payphone services to end-users); signage/posting requirements; minimum service standards; and other safeguards which must be fulfilled in order for a PSP to operate in the State of Oklahoma. Without further clarification from the FCC on the types of requirements that may be found to be barriers, the OCC also remains uncertain of our continued capabilities to provide consumer safeguards.

12. We sincerely appreciate the extensive time and effort the FCC has committed in this proceeding and many others, toward the unified goal to achieve a competitive telecommunications market and we trust that the FCC will continue in its efforts and give favorable consideration to our Petition.

Dated this 18, day of October, 1996.

Respectfully Submitted,

Lawrence R Edmison

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7 Report & Order, ¶ 61